

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

TERRY R. DURBIN,

Plaintiff,

v.

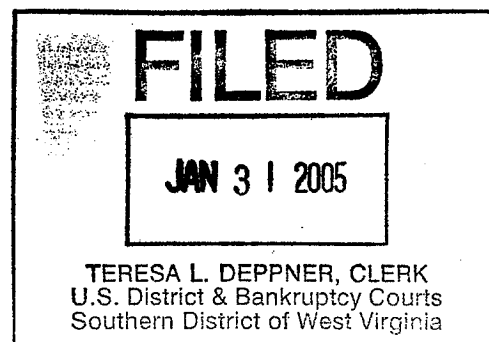
CIVIL ACTION NO.: 2:05-CV-0086

HONORABLE: _____

API OUTDOORS, INC., and its parent or
successor corporation, OUTLAND SPORTS, INC.,
and its parent or successor corporation, BASS PRO SHOP,
and its parent or successor corporation, and
WAL-MART STORES, INC., a foreign corporation,

Defendants.

JOINT NOTICE OF REMOVAL



**TO: TERRY DURBIN AND
HENRY E. WOOD, his attorney:**

Please take notice that the defendants, Bass Pro Shop and Bass Pro, Inc., incorrectly named as "Bass Pro Shop" and Wal-Mart Stores East, L.P., incorrectly named as "Wal-Mart Stores, Inc." hereinafter referred to as "Wal-Mart" hereby give notice of the removal of this action from the Circuit Court of Jackson County, West Virginia, to the United States District Court for the Southern District of West Virginia, at Charleston, pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1446 and 28 U.S.C. § 1332. As grounds for removal, defendants state as follows:

1. Plaintiff commenced this action by Complaint filed on or about November 10, 2004 in the Circuit Court of Jackson County, West Virginia, Civil Action No. 04-C-155, seeking to recover monetary damages against defendants.

2. No defendant was served with the Complaint or otherwise received a copy of the Complaint filed in the state court action earlier than December 30, 2004, the date of service on the West Virginia Secretary of State.

3. This Joint of Notice of Removal has been timely filed within thirty (30) days of the date of service of process on defendant Wal-Mart. 28 U.S.C. § 1446(b). No further proceedings have taken place in this action in the Circuit Court of Wood County, West Virginia.

4. This Court has subject matter jurisdiction of the removed action under 28 U.S.C. § 1332 because as the Complaint demonstrates: (a) the suit is a civil action between citizens of different States, and there exists complete diversity between Plaintiff and Defendants; and (b) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Defendants are informed and believe that the plaintiff, Terry Durbin, is a citizen and resident of the State of West Virginia.

6. Defendant, API Outdoors, Inc., and Outland Sports, Inc., upon information and belief are bankrupt or insolvent.

7. Defendant Bass Pro, Inc., is a Delaware corporation, with its principal place of business in Missouri.

8. Wal-Mart Stores East, L.P., is a Delaware corporation with its principal place of business in Arkansas.

9. The plaintiff's Complaint seeks judgment against the defendants, for compensatory damages. Plaintiff asserts claims of negligence, strict liability; *res ipsa loquitur*

and that defendants breached express and implied warranties of a Grand Slam Shooting Star tree stand, which directly and proximately caused the injuries suffered by the plaintiff.

10. All solvent defendants have consented to this Joint Notice of Removal and join the same.

11. In accordance with 28 U.S.C. § 1446(a), defendants will supplement copies of all process, pleadings and orders filed in the above-entitled action in the Circuit Court of Jackson County, West Virginia, in the immediate future.

12. Defendants will supplement a certified copy of the docket sheet on file with the Circuit Court of Jackson County, West Virginia, in the immediate future.

13. Pursuant to 28 U.S.C. § 1446(a), the United States District Court for the Southern District of West Virginia, at Charleston, is the appropriate court for removal jurisdiction in this action, because it is within the same district and division as Jackson County, West Virginia.

14. Pursuant to 28 U.S.C. § 1446(d), a true copy of this Joint Notice of Removal has been filed with the Circuit Court of Jackson County, West Virginia, and served, along with written notice, on plaintiff, and a copy of said notice is attached as Exhibit A.

15. Defendants reserve the right to amend or supplement this Joint Notice of Removal or to present additional arguments in support of its entitlement to removal.

16. By joining this motion, defendant Bass Pro Shop does not waive its right to proper service of process and is appearing specially to join this Motion to Remove.

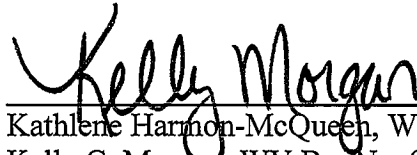
17. No admission of fact, law, or liability is intended by this Joint Notice of Removal, and all defenses, affirmative defenses and motions are hereby reserved.

WHEREFORE, defendants have removed this action from the Circuit Court of Jackson County, West Virginia, to the United States District Court for the Southern District of West Virginia, at Charleston.

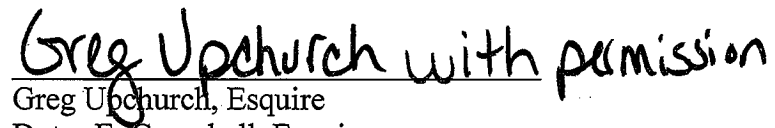
Respectfully submitted,

API OUTDOORS, INC., OUTLAND
SPORTS, INC., BASS PRO SHOP, and
WAL-MART STORES, INC.

BY COUNSEL:



Kathlene Harmon-McQueen, WV Bar No. 5692
Kelly C. Morgan, WV Bar No. 9519
McQueen, Harmon & Murphy, L.C.
Post Office Box 1831
Charleston, West Virginia 25327-1831
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Counsel for Wal-Mart Stores, East Inc.



Greg Upchurch, Esquire
Dutro E. Campbell, Esquire
Husch & Eppenberger
190 Carondelet Plaza
St. Louis, MO 63105
Counsel for Bass Pro Shop, Inc.

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

TERRY R. DURBIN,
Plaintiff,

v.

CIVIL ACTION NO. 04-C-155
HONORABLE THOMAS EVANS, III

API OUTDOORS, INC., and its parent or
successor corporation, OUTLAND SPORTS, INC.,
and its parent or successor corporation, BASS PRO SHOP,
and its parent or successor corporation, and
WAL-MART STORES, INC., a foreign corporation,
Defendants.

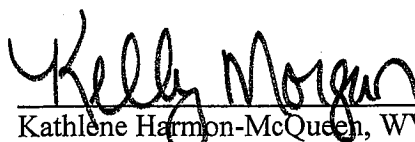
NOTICE OF FILING THE NOTICE OF REMOVAL

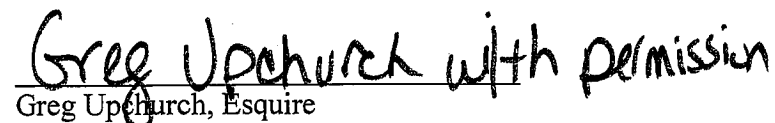
TO: The Clerk of the Circuit Court of Jackson County, West Virginia.

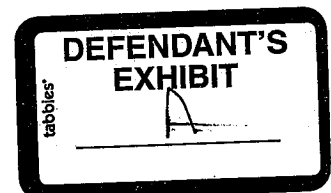
Please take notice that the defendants, API Outdoors, Inc., Outland Sports, Inc., Bass Pro Shop and "Wal-Mart Stores, Inc.," and Wal-Mart Stores East, L.P., incorrectly named as "Wal-Mart Stores, Inc." hereinafter referred to as "Wal-Mart", submit for filing in the above-captioned case the attached Joint Notice of removal which has been filed today in the United States District Court for the Southern District of West Virginia, at Charleston. A copy of the attachment is also filed in the Office of the Clerk of Circuit Court of Jackson County, West Virginia. This notice serves to effect a full removal of the case pursuant to 28 U.S.C. § 1446(d), thereby precluding this State Court from proceeding further in this action.

API OUTDOORS, INC., OUTLAND
SPORTS, INC., BASS PRO SHOP, and
WAL-MART STORES, INC.

BY COUNSEL:


Kathlene Harmon-McQueen, WV Bar No. 5692
Kelly C. Morgan, WV Bar No. 9519
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Counsel for Bass Pro Shop, Inc.



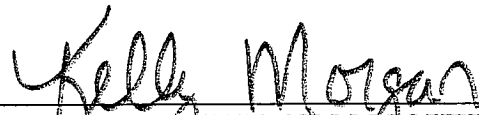
CERTIFICATE OF SERVICE

The undersigned, of counsel for defendant, Wal-Mart Stores, Inc., does hereby certify that the foregoing **NOTICE OF FILING THE NOTICE OF REMOVAL** has been served upon the following counsel of record by this day mailing to them true copies thereof:

Henry E. Wood, Esquire, WV Bar No. 4117
Wood & Associates, L.C.
Post Office Box 4448
Charleston, WV 25364-4448
Counsel for Plaintiff

Greg Upchurch, Esquire
Dutro E. Campbell, Esquire
Husch & Eppenberger
190 Carondelet Plaza
St. Louis, MO 63105
Counsel for Bass Pro Shop, Inc.

Done this 31st day of January, 2005.



KATHLENE HARMON-MCQUEEN
KELLY C. MORGAN


CERTIFICATE OF SERVICE

The undersigned, of counsel for defendant, Wal-Mart Stores, Inc., does hereby certify that the foregoing **Joint Notice of Removal** has been served upon the following counsel of record by this day mailing to them true copies thereof:

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Charleston, WV 25364-4448
Counsel for Plaintiff

Greg Upchurch, Esquire
Dutro E. Campbell, Esquire
Husch & Eppenberger
190 Carondelet Plaza
St. Louis, MO 63105
Counsel for Bass Pro Shop, Inc.

Done this 31st day of January, 2005.



KATHLENE HARMON-MCQUEEN
KELLY C. MORGAN